

January 18, 2006. These comments are intended to advance the case to issue without delay.

Claims 1-11 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent 5,641,495 (Jokura et al.) in view of U.S. Patent 6,180,121 (Guenin et al.). Applicant traverses this rejection.

Fragrance ingredients when formulated into personal care compositions often lose intensity and they change character with time. One factor responsible for these changes is oxidative degradation. Terpenoids are often included within fragrances. These chemicals are oxidatively sensitive. There is a need for an agent that will prevent oxidative breakdown of the terpenoids.

Applicant has found that salts of malonic acid are effective stabilizers of terpenoids. Malonate salts are particularly useful in preventing oxidation of unsaturated chemical structures.

Jokura et al. disclose a skin cosmetic requiring a combination of three elements. These are a ceramide (A), a dicarboxylic acid (B) and a salt of a dicarboxylic acid (C). This combination and each of the ingredients separately are reported useful for their excellent moisturizing effect. See the Abstract and column 3 (lines 51-52 and 57). Malonic acid is listed among eight other dicarboxylic acids. See column 3, lines 33-37.

Unlike the present invention, Jokura et al. is not concerned with the problem of fragrance component instability, and particularly that of terpenoids. The only concern of the reference is to provide sufficient moisturizing effect while avoiding excessive skin

irritation. Absent any appreciation of the problem, the reference could not possibly suggest a solution.

The term fragrance or perfume is mentioned only once in the reference. See column 5, line 33. "Perfumes" is the very last generic adjunct component among a long list of other possible components (e.g. inorganic salts, viscosity regulating agents, preservatives, UV absorbers, colorants and medicinal components). There is no mention of perfume concentration or any materials which might constitute the perfumes.

None of the Examples include any perfume, either generically or specifically. Neither do any of the Examples itemize a malonic acid or salt thereof as representative of the dicarboxylic acids forming the basis of the reference.

Anyone skilled in the art seeking to stabilize terpenoid ingredients of perfumes or fragrances would not be given the faintest hint in Jokura et al. of any advantage in a combination of malonate and terpenoid.

Applicant's claims 2 and 3 recite the presence of the half and fully neutralized acid forms of malonic acid, these being in a molar ratio ranging from about 1,000:1 to about 1:1,000. In claim 3 the respective ratio is narrowed to about 2:1 to about 1:200. Claim 11 further narrows the ratio to from about 1:1 to about 1:20.

Jokura et al. discloses the unneutralized acid (component B) and the partially neutralized acid (component C). The free acid can only co-exist with a partially neutralized salt because of pKa considerations. There is thus no disclosure of a fully neutralized malonic acid (see formula II at page 3).

The Examiner has highlighted the reference as teaching a molar ratio of carboxylic acid to dicarboxylic acid salt as being from 1:9 to 9:1. Attention was drawn to column 3, lines 35-60. This ratio is different from that presently claimed. Jokura et al. has a ratio of free acid to fully neutralized acid. By contrast, applicant claims a ratio of mono to di-neutralized (i.e. half to fully neutralized) malonic acid. The ratio does not involve free acid.

In a sister co-pending application (Serial No. 10/347,982) the Examiner countered that the dicarboxylic acid salts and the composition of Jokura et al. must comprise a mixture of both fully neutralized and half neutralized acid, as the addition of alkali to the acid will result in a composition having some content of both the fully and partially neutralized acid.

Addition of alkali to the free malonic acid would achieve mixtures of free and mono-salts. There would be no di-salt (fully neutralized) malonate present in a system that also included totally non-neutralized ("free") malonic acid. All three species, i.e. free, mono-salt (half neutralized) and di-salt (fully neutralized), could not coexist together. Yet the reference requires the presence of free acid, component B. Since the free acid must be present, the fully neutralized salt of that free acid could not coexist therewith. The pKa of malonic acid would not permit the presence of all three species. Thus, there is a fundamental inconsistency in Jokura et al. If the skilled chemist accepts the necessity for a free acid, then the di-salt of malonic could not be present. Jokura et al. lacks the claimed di-salt of formula II.

Guenin et al. was introduced by the Examiner as teaching fragrance enhancing compositions. These were identified as including terpenoids such as d-limonene, citral and geraniol. Focus was also placed on the exemplary fragrance noted as Deo-Key™.

Guenin et al. avers an extended series of objects addressed by the invention. See column 1 (line 62) bridging to column 2 (line 15). Among those objects or problems are to control malodor, improve fragrance efficiency (i.e. reduce the amount of material), limit irritation and enhance masking ability against underarm odor. None of the objects of the invention are directed at combating oxidative instability.

Apparently Guenin et al. is cited by the Examiner merely to demonstrate that terpenoids are fragrance components and that they are present at applicant's claimed concentrations in fragrances.

A combination of Jokura et al. in view of Guenin et al. would not render the instant invention obvious. Neither of the references is concerned with the problem of oxidative instability of fragrance components, and certainly not of terpenoids. Applicant cannot see how anyone skilled in the art focusing on the oxidation problem would arrive at a malonate salt to solve that problem. The term "perfume" is given a single mention in the primary reference. None of the Examples list perfume among the formula materials. Indeed, Jokura et al. does not even exemplify a malonate salt containing formula. There simply is no juxtaposition or relationship between perfumes and malonates in the primary reference. Guenin et al. does not remedy these deficiencies. The reference simply stands for the proposition that perfumes or fragrances can contain terpenoids. There is neither teaching nor suggestion nor incentive for fortifying terpenoid fragrance compositions with a malonate anti-oxidative agent. For all these reasons, a combination of Jokura et al. in view of Guenin et al. would not render the instant invention obvious.

Against the claims the Examiner has cited *In re Aller*, 105 USPQ 233 (CCPA 1955) for the dicta “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.”

A reading of *In re Aller* reveals that the case concerns a process claim. A single reference was applied against the process claims disclosing process conditions of temperature and concentration slightly different from those claimed.

Unlike the facts of *In re Aller*, the present invention is focused upon a composition rather than a process. Secondly, the Examiner has applied and requires two references to delineate the elements of the claimed invention. Thus, the general conditions of the claim are not disclosed in a single reference. There is simply no issue in the present application concerning the discovery of any optimum or workable ranges that could be determined by routine experimentation. Instead the Examiner presents two references unrelated to one another, with unrelated problems/solutions and through hindsight chooses claim elements selectively from each of these references. This is a rejection based upon hindsight reconstruction.

Claims 1-3 and 5-11 were rejected under 35 U.S.C. § 103(a) as unpatentable over US Patent application No. 2003/0224023 (Faryniarz et al.) in view of US Patent 6,180,121 (Guenin et al.). Applicant traverses this rejection.

Faryniarz '023 has an earliest U.S. filing date of May 29, 2002. The present application claims priority from a Provisional application filed March 17, 2003. Both Faryniarz '023 and the present application are owned by same entity, with all the

inventors having an obligation of assignment to this same entity. Accordingly, Faryniarz '023 is not a reference against the claims under § 103. See § 103(c)(1).

Guenin et al. does not disclose malonates. This reference alone does not present a prima facie case of obviousness.

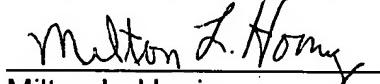
Claims 1-3 and 5-11 were rejected under 35 U.S.C. § 103(a) as obvious over US Patent application No. 2003/0224027 (Faryniarz et al.) in view of US Patent 6,180,121 (Guenin et al.). Applicant traverses this rejection.

Faryniarz '027 has an earliest U.S. filing date of May 29, 2002. The present application claims priority from a Provisional application filed March 17, 2003. Both Faryniarz '027 and the present application are owned by the same entity, with all the inventors having an obligation of assignment to this same entity. Accordingly, Faryniarz '027 is not a reference against the claims under § 103. See § 103(c)(1).

Guenin et al. does not disclose malonates. This reference alone does not present a prima facie case of obviousness.

In view of the foregoing comments, applicant requests the Examiner to reconsider the rejections and now allow the claims.

Respectfully submitted,



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